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SEN. RICHARD SEARS, JR.
SEN. PETER SHUMLIN

STATE OF VERMONT
LEGISLATIVE JOINT FISCAL COMMITTEE

Thursday, July 15, 2010

Minutes

Members present: Representatives Obuchowski, Ancel, Branagan, Larson, and Heath, and Senators Cummings, Bartlett, Sears, and Snelling.

Other Attendees: Administration, Joint Fiscal Office, and Legislative Council staff, various media, lobbyists, advocacy groups, and members of the public.

The Chair, Representative Obuchowski, called the meeting to order at 9:30 a.m., and Senator Snelling made a motion to amend the minutes of June 29, 2010 to reflect that she was in attendance, and then approve them. The Committee adopted the minutes with the correction.

A.1. – Fiscal Office’s Updates/Issues – Fiscal Office’s Report

Stephen Klein, Chief Fiscal Officer, Joint Fiscal Office, highlighted areas of his report sent earlier to members. The Hsiao health care contract was in the process of negotiation. The revenue forecaster contract would go out to bid through various media Friday, July 16, 2010.

Mr. Klein then updated the Committee on the annual JFO evaluations, commenting that the Joint Fiscal Office had received the most evaluations from legislators to date. The overall response from legislators was positive; and after the submission deadline, the office would send feedback to the Legislature by e-mail.

Chair Obuchowski asked Mr. Klein to give a summary of the Vermont Economic Growth Incentive (VEGI) cap issue in the fiscal officer’s report. Mr. Klein explained that the Emergency Board raised the cap of VEGI in January of 2010 for one calendar year from \$10 million to \$23 million starting July 22, 2010. Chair Obuchowski inquired whether there was still room in the cap. Mr. Klein replied in the affirmative and that there was \$5 million remaining in the cap. Representative Ancel added that the Emergency Board could raise it further if the need should arise.

Chair Obuchowski inquired about the City of Burlington’s delay of its annual report to JFC on the Tax Incremental Finance (TIF), due July 1, 2010. Mr. Klein

explained that his office had been in contact with the City, and the City was working on the report. JFO would forward it to JFC members when it arrived.

a. – Education Fund Update

Mark Perrault, Fiscal Analyst, Joint Fiscal Office, handed out an Education Fund Outlook for FY2010 through FY2012 based on revenues that were up for adoption at the Emergency Board meeting that afternoon. Recalling that the Education Stabilization Reserve Fund had been close to its minimum at the end of the 2010 legislative session, he pointed out the highlighted area of the handout on line 34, showing that the five-percent maximum was expected to be met going forward through FY2012. With that said, the FY2012 full reserve was dependent on school districts meeting the 2% reduction from Act 146 of 2010 (Challenges for Change). Currently, the Department of Education was in the process of creating targets for supervisory unions to distribute to its districts, and would then forward those targets to the Government Accountability Committee.

Chair Obuchowski inquired whether the department was taking into consideration those schools that had already scaled back their budgets during the first part of 2010. Mr. Perrault stated that the department had taken those reduced budgets into consideration and was developing criteria for the targets. Representative Heath commented that the challenge was for supervisory unions to implement reductions without causing anxiety among the schools.

Mr. Perrault explained about an error in a letter sent out by the Department of Taxes to over 7,000 Vermonters. The department recently sent a follow-up letter to those who had received the incorrect statements with a correction. Chair Obuchowski inquired as to why the error occurred and what actions the department was taking to avoid the mistake in the future, such as a review process. Mr. Perrault stated he was unsure of its process for handling such mistakes. Senator Sears pointed out that on side two of the handout there were some errors in the numbers that the department had quoted to JFO, and Mr. Perrault agreed. He then elaborated that out of the 7,100 letters sent to Vermonters, 5600 needed readjustment in the statement calculations. Senator Bartlett suggested that the JFO do an issue brief for all members on the changes. Mr. Klein agreed a simple explanation of the income sensitivity changes should be created and sent out to members.

b. – Medicaid Update

Stephanie Barrett, Fiscal Analyst, Joint Fiscal Office, handed out and highlighted areas of a report on Medicaid for Fiscal Year 2010, intended for the Emergency Board meeting later that day. Overall enrollment for all Medicaid eligibility groups came in just slightly higher than what the Emergency Board adopted in January of 2010. The Vermont Health Access Program (VHAP) had the most growth, believed to be due to economic factors. Medicaid expenditures are expected to be close to targets but not all departments have reported final numbers. The Global Commitment Fund is on target for FY2010 and could be slightly higher at close, with an anticipated \$43 million for the FY2011 budget.

The Catamount Fund revenue for FY2010 decreased; and the cause is being analyzed. The State Health Care Resources Fund had a \$2.6 million increase due to an increase in tobacco tax revenues and settlements. The FY2011 Budget Adjustment may have a \$3 - 4 million gap as a result of the impact of lower unemployment on the baseline of ARRA enhanced funding. She stated the enhanced Federal Medicaid Assistance Program (FMAP) extension for which \$62 million was contingently reserved in the FY2011 budget is unlikely to happen, or if so, at a much lower level. Therefore, the contingent allocations from the reserve are unlikely to be made. Senator Sears asked how the Corrections investments were affected as a result of this. Ms. Barrett explained that \$5 million of these Emergency FMAP contingent funds were for Corrections and was unclear how that would be addressed. Senator Sears stated that there is a question of what ability Corrections had in meeting targets without the additional funds and the repercussions of not meeting targets. This would be discussed August 4, 2010, at the Corrections Oversight meeting.

c. - FMAP Update

Nolan Langweil, Fiscal Analyst, Joint Fiscal Office, gave an update on Congress's efforts to revive an extension of the enhanced FMAP to states. While there continues to be efforts within Congress to revive the legislation, it appears to be in a holding pattern, and its prospects of passage remain unclear. Thus far, many avenues have been used to pass the legislation but have been unsuccessful. If the legislation does move forward, whether as a stand-alone bill or as part of a bigger package, it is likely to be less than the \$62 million anticipated by Vermont earlier on. The Office will continue to monitor the situation.

d. – 30-day Grant Acceptance Policy Adoption

Nathan Lavery, Fiscal Analyst, Joint Fiscal Office, provided a proposed draft Expedited Grant Review Policy to the Committee, and gave a brief summary on it. American Recovery and Reinvestment Act (ARRA) grants were typically the most common requests. The Chair queried of the amount of days for an expedited process, and Mr. Lavery responded that typically it took between 10 and 14 days. Representative Ancel inquired about step 4 of the process, needing seven affirmative JFC responses to the grant. Mr. Lavery explained the seven responses was an arbitrary number but the intent was to garner at least seven. Representative Larson asked if a request would proceed through the regular statutory process if it failed to receive approval in an expedited fashion, and Mr. Lavery said it would.

Senator Snelling made a motion to approve the draft policy (see motion below), and the committee adopted the motion.

Consistent with Sec. 127.2 of Act 156 of 2010, the Legislative Joint Fiscal Committee accepts the Expedited Grant Review policy set forth by the Joint Fiscal Office.

Notation of Intent: On July 16, a request for expedited review of a grant was received by JFC. In consultation with the Chair, it was clarified that, pursuant to the new policy, the Chair's duty to

"decide whether or not to grant this request" refers to the request to expedite the review, not decide whether or not to accept the Governor's approval of the item.

B.1. – BISHCA – Transfer of unencumbered balances

Michael Bertrand, Commissioner, Department of Banking, Insurance, Health Care, and Administration, distributed a handout summarizing the unencumbered balances of the Insurance Regulatory and Supervision Fund, the Securities Regulatory and Supervision Fund and the Captive Insurance Regulatory and Supervision Fund. The total amount of unencumbered fund balance available for transfer to the General Fund was \$6,786,539.24.

Representative Heath inquired what the 2010 budget estimates had been, and Ms. Barrett responded the fund balance amount was \$2.9 million higher than anticipated. Commissioner Bertrand hypothesized that the ease of using electronic payment may have contributed to the increase in revenue to the department.

Senator Sears made a motion to approve the transfer of funds (see motion below), and the committee approved the motion.

In accordance with Sec. 60(a)(2) of Act 67 of 2010, the Legislative Joint Fiscal Committee approves the transfer of the unencumbered balances estimated at \$6,786,539.24 from BISHCA to the General Fund.

2. - Disbursement of funds – Emergency Personnel Survivors Benefit Special Fund

James Reardon, Commissioner, Department of Finance & Management, and John Booth, Vermont Treasurer's Office, distributed a handout to the committee, explaining a technical language fix to the FY2010 Budget Adjustment Act through the FY2011 Budget Adjustment process in regards to the Emergency Personnel Survivors Benefit Special Fund (EPSBSF)

Representative Heath made the motion below, and the Committee approved the motion.

Pursuant to 20 V.S.A. § 3173(b), the Joint Fiscal Committee hereby authorizes the state treasurer to make disbursements of any awards that may be granted by the Emergency Personnel Survivors Benefit Review Board in FY2011 up to a total of \$100,000.

3. - Preliminary Closeout Report

Commissioner Reardon provided a handout to the Committee and explained that the FY2010 final closeout numbers would be available at JFC's September meeting. He commented there may be some areas that would need addressing in the FY2011 Budget Adjustment process. He noted that the General Fund amounts on the handout were calculated before any reversions and carryforwards. The positive outlook for FY2010 was that figures were in excess of projections by an estimated \$7.5 million that may allow for

the fulfillment of waterfall projects in the FY2011 budget, and the long-term care deficit had been covered by closeout funds as well.

Representative Heath inquired whether the projected \$7.5 million in excess General Funds for FY2010 included the property transfer tax. Stephanie Barrett responded that it did not include about \$1.1 million as the revenues came in higher than anticipated; that would increase excess General Funds.

4. - Environmental Contingency Fund Expenditures – JARD site in Bennington

Justin Johnson, Commissioner, Department of Environmental Conservation (DEC), referred to a letter sent earlier to the Committee, requesting additional authority for expenditures from the Environmental Contingency Fund for the former JARD site in Bennington (Site #77-0138). Senator Sears asked what other funds the JARD site had utilized. Commissioner Johnson explained that some funds were transferred from the Brownfield Fund to repair a cap and to cleanup contaminated water on the site. Senator Sears inquired whether a correlation between the contaminated water issues at the JARD site and the air quality issues at the Bennington State Office Building had been investigated, since the two buildings were in close proximity to one another. Trish Coppolino, Project Manager for the JARD site, informed the Committee the Department would sample the site and check on this further.

Chair Obuchowski requested JFO to draft a letter in respect to Senator Sears' inquiry and forward it to the commissioner of DEC and the commissioner of the Department of Buildings & General Services, and then schedule the commissioner/s to respond at the JFC's September meeting.

Senator Snelling made a motion (below) to approve the JARD site request, and the Committee passed the motion.

In accordance with 10 V.S.A. § 1283 (b)(9), the Legislative Joint Fiscal Committee grants the additional authority for the expenditure of \$100,000 from the Environmental Contingency Fund for the former JARD site in Bennington (site #77-0138) to be spent under (b)(2) of the above referenced statute.

5. - Web Portal Board e-Procurement Fee Approval

David Tucker, Commissioner, and Harry Bell, Webmaster, Department of Information and Innovation, handed out a packet of materials to the Committee. Commissioner Tucker explained that the e-Procurement System would modernize how things are accomplished by the state. Positive revenues from the proposed fee structure of the system were projected in 2013. Representative Ancel inquired whether the fees would remain at the current proposed structure in the future or would they decline when a profit was obtained. Additionally, she asked where the excess receipts would be transferred. Commissioner Tucker responded that the additional funds would cover all the public nongenerating revenue sites, and allow hosting of the Web Portal.

In responding to Chair Obuchowski's questions, Commissioner Tucker explained that if the state bought an e-Procurement system outright, the estimated cost would be \$2-3 million. Sycom.net, the outsourced company providing the e-Procurement System, would receive 70% of the proceeds from the fees and the Web Portal Board would gain the remainder of the revenue of 30%.

Representative Larson asked for an analysis of a public versus a private e-Procurement system showing data from other states that utilize the different approaches. Senator Bartlett commented that the concept of the e-Procurement system began four years ago as a long-term investment strategy to save money and to be self-sustaining. Chair Obuchowski and Representative Ancel agreed that an analysis mentioned by Representative Larson of the system was important.

Deborah Damore, Office of Purchasing and Contracting, Department of Buildings & General Services, informed the committee that two years ago her office viewed a previous proposed self-funded e-Procurement model, and the proposed fee structure then was higher and did not include a cap as the current proposal outlined. She offered that her office would review the fee structure annually and adjust it accordingly if found to be unfair.

Representative Branagan inquired as to why the proposal was not brought to the House Committee on Ways & Means instead of delaying for JFC. Commissioner Tucker responded that the Web Portal Board had to deliberate on the proposal, and then statutory authority specified JFC to then approve or disapprove the proposal.

Representative Branagan agreed that an analysis of the different structures should be performed. Representative Heath showed concern for the future fee structure from Representative Ancel's earlier inquiry, but felt more comfortable with Ms. Damore's testimony that her office would be monitoring the fee structure. Chair Obuchowski requested a more detailed list of the system's cost of sale and expenses. He suggested that the department do a further data exercise of adding historical data on profit and loss of the Web Portal services to show viability of the program.

Representative Ancel commented that a former fee on filing taxes raised concerns. Commissioner Tucker agreed to return to JFC at its September meeting with further information from Committee members' requests.

Senator Cummings made a motion to approve the fee structure (below), and the Committee agreed to the motion.

In accordance with 22 V.S.A. § 953(c), the Legislative Joint Fiscal Committee approves the proposed fee structure for the e-Procurement system, formally approved by the Web Portal Board on February 2010.

B.6. – Vermont State Hospital’s Secure Residential Recovery Program Quarterly Update

Beth Tanzman, Deputy Commissioner, Department of Mental Health, handed out a written report, and highlighted the Certificate of Need (CON) application process the program currently was undergoing. She added that the department was considering alternative locations at the Waterbury state complex for the secure residential recovery program.

C. - Challenges for Change Update

Senator Snelling, Co-chair, Government Accountability Committee (GAC), handed out an update on the Challenges for Change initiatives, and explained that GAC received the second quarterly report from the administration. She anticipated that the third quarterly report, due in October, would include a more complete list of enacted programs with savings plans.

Representative Heath queried whether GAC was encouraging the administration to strategize ideas for further savings beyond the current challenges. Senator Snelling responded that the biggest struggle for the administration and GAC has been to define clear measures from the outcomes of Act 68 and Act 146 of 2010. Representative Heath commented that as time passes it will get harder to fill the FY2011 projected deficit. Representative Larson added that, in the most recent quarterly report, he found it difficult to understand which measures were related to the approved challenges in Act 68 and Act 146 and which ones related to new or failed ideas. He then asked whether there has been a process for committees of jurisdiction to meet and discuss potential new challenges as set out by Act 146. Senator Snelling responded the planning process for committee responses was in the planning stages. Representative Heath suggested that, in the next quarterly report, the administration separate out the approved challenges from Act 68 and Act 146 from proposed challenges.

D. – American Recovery and Reinvestment Act (ARRA) Grants Update

Coleen Krauss, Director of Economic Development and Community Programs, Office of Economic Stimulus and Recovery, provided a handout to the Committee, and explained that within two weeks, more conclusive numbers would be forwarded to the Committee. She commented that Vermont was in a better position to expend funds compared to its neighboring states. The planning of recipient monitoring training was under way to ensure compliance with ARRA rules for reporting.

Chair Obuchowski inquired whether Vermont, in utilizing ARRA funds, met expectations. Ms. Krauss responded that Vermont exceeded its own expectations because funding went smoother and faster than expected. Representative Larson commented that it appeared from viewing the handout that ARRA funds were being spent too slowly. Ms. Krauss explained that there are some larger ARRA grants that were just received. Representative Larson in referring to the handout clarified that to provide a more accurate reflection of the state’s cumulative receipts, it should be noted when Medicaid receipts were included or not included in the numbers.

E.1. – Other Business – Geothermal System Funding for Bennington State Office Building (BSOB)

Representative Heath explained that \$2 million for the BSOB Geothermal System had been approved during the FY2011 budget process. The difficulty was a difference of opinion between the administration and the legislature on the funding stream. The administration's preference was the Clean Energy Development Fund but the legislature's was ARRA funds. This difference resulted in two sections of two different Acts in conflict with each other. Due to conversations between the Legislative Counsel, JFO, the Speaker, and herself, the administration will move forward using ARRA funds. In the FY2011 BAA, the references in the Capital Bill relating to the Clean Energy Development Fund will be deleted as the funding source.

2. – Notification of an Emergency Grant for TANF Food Stamp Benefit

Ms. Barrett handed out an e-mail from David Cohen of the Agency of Human Services, explaining an upcoming Emergency Grant for TANF Food Stamp benefits. Representative Larson and others showed a positive response to the concept and asked Ms. Barrett to send more information when known.

F. – Revenue Update

Tom Kavet, Legislative Economist, handed out a July 2010 Economic Review and Revenue Forecast Update, and commented that the data in June 2010 showed that revenue should be monitored closely while business cycles were fluctuating and uncertain. The upsides were: leading indicators tentatively showed positive growth in FY2012, while a withdrawal of stimulus funding may stymie growth. Mr. Kavet cautioned that there was still a lot of economic fragility for the state moving forward. He pointed out a couple of errors in his handout: on page 1, the Transportation Fund should reflect an increase of 0.5, showing a 0.3 difference instead of a 0.2; and page 19, the numbers needed truing-up. Representative Heath commented even though the deficit may have decreased for FY2012, Vermont had already made such deep budget reductions in the last three years, it would be extremely difficult to find further savings.

The Committee adjourned by a motion from Representative Heath at 12:31 p.m.

Respectfully Submitted,

Theresa Utton-Jerman, Legislative Joint Fiscal Office